



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,151	04/09/2004	Gregory A. Piccionelli	39003.815US01	1181
7590 12/31/2007				
Michael M. Gerardi Esq. 28876 Woodcrest Lake Drive Menifee, CA 92584				
			EXAMINER UTAMA, ROBERT J	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 12/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/822,151

Applicant(s)

PICCIONELLI ET AL.

Examiner

Robert J. Utama

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4 is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Application

1. In response to the office action filed on 10/22/2007, the current status of the application are as follow: claim 1-20 are still pending. No claim has been cancelled or withdrawn.

Claim Objections

2. Claim 1-4 are objected to because of the following informalities: Claim 1-4 contain a plurality of elements or steps that are not separated by a line indentation. When a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. See 37 CFR 1.75 and MPEP 608.01(i)-(p). Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 1, 3-9, 12, 17 and 19-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Shea US 7,056,265 in view of Watterson et al US 2002/0022551.**

Claim 1 and 8: Shea provides a teaching of obtaining advise pertaining to performance of an exercise, the method comprising the steps of: accessing a central site via a network (see col. 5:3-20); visiting a physical location related to a fitness-related activity (see FIG 13A item 304 and col. 21:1-11); providing information identifying the location to the central site (see col.

10:50 - col. 11:5) and receiving advise via the network from the central site pertaining to the fitness related activity (see FIG 16D, FIG. 12, col. 17:27-45).

While the Shea reference provide the teaching of receiving an advice from the network; it is not clear if the advice given in the Shea reference is a live advice from a personal advisor. However, the Watterson reference provides a teaching of receiving a live advice from a personal advisor (see Watterson paragraph 82 and 76). Therefore it would have been obvious to include the feature of receiving a live advice from a personal advisor, as taught by Watterson, because it would enable the user to enable the trainer to modify the exercise content to suit the user (see paragraph 21-23).

Claim 3: Shea provides a teaching of obtaining advise pertaining to performance of an exercise, the method comprising the steps of: accessing a central site via a network (see col. 5:3-20); visiting a physical location at which at least one exercise apparatus is present (see FIG 13A item 304 and col. 21:1-11); providing information identifying the location to the central site (see col. 10:50 - col. 11:5); providing information identifying at least one exercise apparatus present at the location to the central site (see FIG. 13A item 302a and 302b) and receiving advise via the network from the central site pertaining the use of the exercise apparatus (see FIG 16D, FIG. 12, col. 17:27-45).

While the Shea reference provide the teaching of receiving an advice from the network; it is not clear if the advice given in the Shea reference is a live advice from a personal advisor. However, the Watterson reference provides a teaching of receiving a live advice from a personal advisor (see Watterson paragraph 82 and 76). Therefore it would have been obvious to include the feature of receiving a live advice from a personal advisor, as taught by Watterson, because it would enable the user to enable the trainer to modify the exercise content to suit the user (see paragraph 21-23).

Claim 4: Shea provides a teaching of obtaining advise pertaining to performance of an exercise, the method comprising the steps of: accessing a physical location associated with an activity

network (see FIG 13A item 304 and col. 21:1-11); accessing a central site via a network (see col. 5:3-20); providing information identifying the location to the central site (see FIG. 13A item 302a and 302b) and receiving advice via the network from the central site pertaining to the activity (see FIG 16D, FIG. 12, col. 17:27-45).

While the Shea reference provide the teaching of receiving an advice from the network; it is not clear if the advice given in the Shea reference is a live advice from a personal advisor. However, the Watterson reference provides a teaching of receiving a live advice from a personal advisor (see Watterson paragraph 82 and 76). Therefore it would have been obvious to include the feature of receiving a live advice from a personal advisor, as taught by Watterson, because it would enable the user to enable the trainer to modify the exercise content to suit the user (see paragraph 21-23).

Claim 5: Shea provides a teaching where the method is related to a fitness related activity (col. 15:45-53).

Claim 6: Shea provides a teaching where the advice pertains to the performance of the activity (see col. 16:10-20).

Claim 9: Shea does not provide a teaching where the central site arranges for a personal advisor to directly contact the user. However, the Watterson reference provides a teaching where the central site can arrange for a personal advisor to contact the user (see paragraph 58 where the user can use the system to perform direct communication with a trainer).).

Therefore it would have been obvious to include the feature of receiving a live advice from a personal advisor, as taught by Watterson, because it would enable the user to enable the trainer to modify the exercise content to suit the user (see paragraph 21-23).

Claim 12: Shea does not provide a teaching where the exercise apparatus is provided with a camera which enables the user advisor to observe the user's performance on the exercise apparatus. However, the Watterson reference provides a teaching of an exercise apparatus with a camera which enables the user advisor to observe the user's performance on the

exercise apparatus (see paragraph 82-83). Therefore it would have been obvious to include the feature of an exercise apparatus with a camera which enables the user advisor to observe the user's performance on the exercise apparatus, as taught by Watterson, because it would enable the user to enable the trainer to modify the exercise content to suit the user (see paragraph 21-23).

Claim 17, 19-20: The Shea reference does not provide a teaching where the advice is provided upon payment of a per-use or a periodic fee. However, the Watterson reference provides a teaching where the advice is provided upon payment of a per-use or a periodic fee (see Watterson paragraph 192-194). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of where the advice is provided upon payment of a per-use or a periodic fee, as taught by Watterson, since it allows the system to effectively calculate the user's service usage and its corresponding fee (see paragraph 194).

5. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Shea US 7,056,265, in view of Watterson et al US 2002/0022551 and further in view of Primus.

Claim 7: The Shea and Watterson do not provide an explicit teaching where the advice that discourages engagement in an activity. However, Primus provides a teaching of advice that discourages engagement in an activity (see Page 2 bullet number 2-4). Therefore, it would have been obvious for one of ordinary skilled in the art to include the feature of advice that discourage engagement in an activity, as taught by Primus, into the system of Shea because it would enable the system to instruct user by discouraging bad practice/technique during the exercise that can lead to injury (see Page 2 bullet number 2-4).

6. Claim 2, 10-11, 14 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Mault US 2002/0055857, in view of Watterson et al US 2002/0022551

Claim 2 and 10: Mault provides a teaching of obtaining advice pertaining to consumption of at least one food or beverage, the method comprising of: accessing a central site via a network (paragraph 40); visiting a physical location at which at least one food or beverage is served (see paragraph 39); providing information identifying the location to the central site (see paragraph 41); receiving advice via the network from the central site pertaining to consumption of at least one food or beverage served at the location (see paragraph 39).

The Mault reference does not provide the teaching of receiving an advice from the network. However, the Watterson reference provides a teaching of receiving a live advice from a personal advisor (see Watterson paragraph 82 and 76). Therefore it would have been obvious to include the feature of receiving a live advice from a personal advisor, as taught by Watterson, because it would enable the user to enable the trainer to modify the exercise content to suit the user (see paragraph 21-23) and enable the trainer to motivate the use (see paragraph 9).

Claim 11: The Mault reference does not provide a teaching where the personal advisor is an e-coach. However, the Watterson reference provides a teaching where the personal advisor is an e-coach (see paragraph 61). Therefore it would have been obvious to include the feature of receiving a live advice from a personal advisor, as taught by Watterson, because it would enable the user to enable the trainer to modify the exercise content to suit the user (see paragraph 21-23) and enable the trainer to motivate the use (see paragraph 9).

Claim 14: The Mault reference provides a teaching where the location is provided by determining the user's GPS coordinate while user is at the location (see paragraph 41).

Claim 18: The Mault reference does not provide a teaching where the advice is provided upon payment of a per-use or a periodic fee. However, the Watterson reference provides a teaching where the advice is provided upon payment of a per-use or a periodic fee (see Watterson paragraph 192-194). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of where the advice is provided upon payment of a per-use or a periodic

fee, as taught by Watterson, since it allows the system to effectively calculate the user's service usage and its corresponding fee (see paragraph 194).

7. Claim 13 and 15-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Shea US 7,056,265 in view of Watterson et al US 2002/0022551 and further in view of Mault US 2002/0055857.

Claim 13 and 15-16: While the Shea reference provides a teaching of utilizing the location of the user; the Shea reference is silent in providing a teaching where the location is provided by determining the GPS coordinates while the user is at the location. However, the Mault reference provides a teaching where the location of the user can be obtained by determining a GPS coordinate (see paragraph 41). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of the location is provided by determining the GPS coordinates while the user is at the location, as taught by Mault, since it enables the Shea system to accurately detect the user's location.

Response to Arguments

8. Applicant's arguments with respect to claim 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

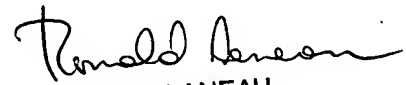
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Utama whose telephone number is (571) 272-1676. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezutto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RU


RONALD LANEAU
PRIMARY EXAMINER
12/26/07